

State of California
Department of Fish and Wildlife



Memorandum

Date: June 16, 2020

Governor's Office of Planning & Research

To: Mr. Scott Guidi
California Department of Transportation
1976 E. Dr. Martin Luther King Jr. Boulevard
Stockton, CA 95201
Scott.Guidi@dot.ca.gov

Jun 17 2020

STATE CLEARINGHOUSE

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From: Mr. Gregg Erickson, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: **Revised** Potato Slough Bridge Bearing Pads Project, Initial Study with Mitigated Negative Declaration, SCH #2020059015, San Joaquin County

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent for an Initial Study/Mitigated Negative Declaration (IS/MND) from the California Department of Transportation (Caltrans) for the Potato Slough Bridge Bearing Pads Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is a Trustee Agency pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

CESA-listed species identified that may occur within the Project area include the Delta smelt (*Hypomesus transpacificus*) state endangered, longfin smelt (*Spirinchus thaleichthys*) state threatened, Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), state threatened, Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), state endangered, Swainson's hawk (*Buteo swainsoni*) state threatened and giant garter snake (GGS; *Thamnophis gigas*) state threatened.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Migratory Birds and Raptors

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation

Objective: Caltrans proposes to replace failed elastomeric bearing pads and joint seal assemblies. Caltrans also proposes to remove a portion of structural concrete and to provide an access opening in the soffit and install temporary falsework on a pile foundation to temporarily support the bridge structure during the replacement of the bearing pads and joint seal assemblies for the Little Potato Slough Bridge (Bridge No. 29-0101), located west of the City of Lodi, San Joaquin County. Based on the Bridge Inspection Reports, rehabilitating the Little Potato Slough Bridge is required to address the failed elastomeric bearing pads on both ends of the bridge at span 5 and span 20.

Location: The Project is located along State Route (SR) - 12 in San Joaquin County, California at Bridge No. 29-0101 at Post Mile (PM) 4.4.

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Environmental Setting: The Little Potato Slough Bridge is in San Joaquin County. The area surrounding the proposed project consists of single-residence homes, small businesses, a commercial recreational campground, and agriculture. Located in an overall unincorporated rural area, the closest large urban setting to the bridge is the City of Lodi.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist Caltrans in identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Project Schedule and Timing

The IS/MND does not include a description of how many days are required to complete the Project and does not describe construction methods. For instance, page 4-5 describes a 55-hour period of closure on SR-12, two weekend closure periods along SR-12, and indicates night work will be required to complete the Project only. In order for CDFW to evaluate the potential for significant impacts CDFW recommends the IS/MND identify the total days needed to complete the Project, how much nightwork may be needed, and the time of year in which the Project will be initiated and completed.

Project Description and Design Plan Set

Important Project description information is not included that would allow CDFW evaluate potential impacts. The IS/MND does not provide a detailed description of H-pile installation methods, H-pile dimensions, or provide a discussion or analysis of the data regarding potentially injurious sound levels during H-pile installation. Also not provided are design plan sets for the Project including pile size, pile number, location, and bridge deck rehabilitation dimensions. Page 4 and 5 of the IS/MND provides a brief description indicating that H-piles will be driven to a depth of 60 feet, but does not describe how that is achieved, or if it will be accomplished by installing the piles in water, in a de-watered channel, or on dryland. A brief reference to no work within Little Potato Slough or the Mokelumne River is provided on page 11 of the Biological Resources Section of the IS/MND, but a detailed description including how and when H-piles will be installed is not provided. In order for CDFW to evaluate the potentially significant impacts of the Project and provide avoidance and minimization measures, it is recommended that a full plan set be provided with detailed information on the pile dimensions and locations, installation methods, material quantities, and the location of temporary and permanent structures.

Natural Environmental Study/Technical Studies

The IS/MND references multiple technical studies and appendices that have not been provided. Specifically, the Biological Resources Section of the IS/MND references a 2018, Natural Environmental Study (NES) but the NES or a link to the NES is not provided. In addition, page 10 of the IS/MND includes a list of other technical studies conducted for the Project and references to these studies can be found in Appendix A, but the information of the studies is not summarized. The technical studies cited on page 10, include the NES, Biological Assessment, Botanical Surveys and Aquatic Resources Delineation as references but those documents themselves are not provided as appendices within the IS/MND. For CDFW to conduct a full evaluation of the potentially significant impacts and recommend avoidance and minimization measures to reduce those impacts below a level of significance as required by CEQA timely access to those technical studies is necessary. CDFW acknowledges that the additional information can be made available by request to District 10 Public Affairs Unit, but CDFW recommends including these documents in the updated IS/MND and on any subsequent future environmental documents by directly attaching the studies or providing an internet link to the

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studies and appendices. CDFW's ability to evaluate and respond to environmental documents is significantly reduced by not including these documents electronically at the time of State Clearinghouse submission.

Fish and Wildlife Resources

CDFW recommends that a full list or table is included in the updated Biological Resources Section of the IS/MND that notes species common name, scientific name, State and federal listing status (as applicable), habitat type preference and determination on presence, for all special-status species with the potential to occur within the Project.

The Biological Resources section of the IS/MND does not specify the potential significant impacts to state threatened or endangered species habitat, although Table 1 indicates that a CESA ITP will be applied for during the Project's final design phase. As previously noted, issuance of a CESA ITP is subject to CEQA documentation and specification of impacts to state listed species therein. This analysis should be provided for state listed fish species, giant garter snake, Swainson's hawk, special-status plant species and any other state listed species with the potential to be impacted by completion of the Project. Without an evaluation of potential significant impacts to state listed species, CDFW may be unable to rely on this IS/MND to issue a CESA ITP and additional CEQA documentation would be required.

State Listed Fish Species

The IS/MND states that no in-water work will occur at Little Potato Slough or at the Mokelumne River, but it is unclear how the Project will be completed and if injurious sound levels may occur which have the potential to cause take of State listed fish species, as the location of the H-pile installation is not specifically addressed within the IS/MND. The Mokelumne River system to which this Project location has a direct connection, has known occurrences of Delta smelt, longfin smelt, Central Valley spring-run Chinook salmon and Sacramento River winter-run Chinook salmon. The IS/MND does not provide no details on how construction will be accomplished while avoiding in-water work. Without additional information on construction methods and timelines, CDFW is unable to provide relevant avoidance and minimization measures or determine if a CESA ITP would be required for incidental take of state listed species by the Project.

Swainson's Hawk

Page 12 of the IS/MND indicated that in 2018 there was an active Swainson's hawk nest and suitable foraging habitat exists within the Project. The IS/MND should specify that protocol-level surveys will be conducted during the hawk nesting season which is generally from March 1 until September 15. The CEQA document should also include a description of the survey area, survey methodology and timing of each survey visit. Surveys should be conducted according to the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>). CDFW strongly recommends that the TAC survey method be strictly followed by starting early in the nesting season (late March to early April) in order to maximize the likelihood of detecting an active nest. Surveys should be conducted within a minimum 0.25-mile radius of the proposed Project area, and should be completed for at least the two survey periods immediately prior to initiating any Project-related construction work. Raptor nests may be very difficult to locate during egg-laying or incubation, or chick brooding periods (late April to early June) if earlier surveys have not been conducted. These full-season surveys may assist with Project planning, development of

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appropriate avoidance, minimization and mitigation measures, and may help avoid any Project delays.

In order to avoid “take” or adverse impacts to Swainson’s hawk in the event that an active nest is found during surveys, CDFW recommends avoiding all Project-related disturbance within a minimum of 0.25 miles (and up to 0.5 miles depending on site-specific conditions) of a nesting Swainson’s hawk during the nesting season. Please refer to the CDFW guidance document on Swainson’s hawk, which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>, on take avoidance, minimization and mitigation measures.

If “take” or adverse impacts to Swainson’s hawk cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA Permit must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). In order to reduce impacts to Swainson’s hawk nests to less-than-significant, the appropriate credits shall be purchased from a CDFW approved conservation or mitigation bank, or by placing a conservation easement over lands providing suitable nesting habitat including funding an endowment for managing the lands for the benefit of Swainson’s hawk in perpetuity as well as preparation of a long-term management plan by a qualified land manager. To reduce impacts to Swainson’s hawk foraging habitat to less-than-significant, permanent impacts should be mitigated at a 1:1 ratio through purchasing Swainson’s hawk foraging credits at a CDFW approved conservation or mitigation bank or by placing a conservation easement over lands providing suitable foraging habitat including funding an endowment for managing the lands for the benefit of Swainson’s hawk in perpetuity as well as preparation of a long term management plan by a qualified land manager.

Swallows

The IS/MND should incorporate avoidance and minimization measures for species that have the potential to nest on or within the bridge such as cliff swallows (*Hirundo pyrrhonta*). CDFW recommends the updating or inclusion of the following avoidance and minimization measures in the Biological Resources Section of the IS/MND to reduce impacts below a level of significance. Weekly inspection of the bridge for nesting activity shall begin by March 15 and shall continue until the Project is completed. If cliff swallows begin colonizing the bridge prior to beginning bridge work, all nest precursors (mud placed by swallows for construction of nests) shall be removed at least once daily until swallows cease trying to construct nests. A phased construction may also be developed in consultation with CDFW, prior to the initiation of construction, to avoid colonized areas during their most critical periods of the life cycle. This activity shall not result in harm or death to individual swallows. Exclusionary bird netting is prohibited due to its known potential to entrap or ensnare bird and bat species.

Giant Garter Snake

The IS/MND indicates there is suitable GGS habitat present at the Project site, GGS have been documented several times within five miles of the Project, and that a two-step construction staging approach would minimize direct effects on GGS. In order for CDFW to evaluate the impacts and provide recommendations for appropriate compensatory mitigation, the IS/MND should incorporate a more in-depth evaluation of the GGS habitat that will be impacted. Due to the presence of GGS habitat on-site and the nearby occurrences, CDFW recommends a CESA ITP be obtained.

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Special-Status Plant Species

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities," which can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Page 18 and 19 of the IS/MND provides an avoidance and minimization measure for special-status plant species but does not provide a suitable list of the potential special-status plants that may occur on-site. Page 18, references this information is provided in the NES but does not summarize the information in the IS/MND. CDFW recommends the NES be included as an appendix to the IS/MND, as it may contain much of the information requested in this comment letter for special-status plant species. As a complete species list has not been provided, CDFW is unable to determine if significant impacts are occurring to special-status plant species or if threatened and endangered plant species have the potential to be impacted by the Project. If a state-listed or state Rare² plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take.

CDFW recommends that AMM BIO-15 and AMM-BIO-16 are re-written as one measure to include the following language to reduce potential impacts to special-status plants to less-than-significant:

AMM BIO-15 Botanical Survey - A Qualified Biologist shall conduct a survey during the appropriate blooming period(s) for all special-status plants that have the potential to occur within the Project site prior to the start of construction. Surveys should be conducted following the *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018³. If special-status plants are found, the Project will be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, compensatory mitigation and on-site restoration will be implemented and the plan provided for CDFW review and approval. A Qualified Biologist in this context should be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols. If take of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*).

Only two plant species are addressed in the IS/MND; Suisun Marsh aster and Delta tule pea which both have a California Rare Plant Rank of (1B.2).

Delta Tule Pea and Suisun Marsh Aster

Page 10 of the IS/MND notes the direct observation of Delta tule pea has been observed south of the bridge along the eastern levee of Little Potato Slough and Suisun Marsh aster north of the bridge, along the eastern edge of Little Potato Slough. Page 29, AMM-BIO-16 of the IS/MND notes avoidance of areas that contain special-status plants, as feasible and notes actions of

² In this context, "Rare" means listed under the California Native Plant Protection Act.

³ <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>

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plant salvage and transplant. CDFW recommends that a specific plan is developed for the salvage and transplant Delta tule pea and Suisun Marsh aster in areas of impact that is submitted to natural resource agencies for review and approval prior to any ground disturbing activity. Delta tule pea and Suisun marsh aster are species that have shown success in salvage and relocation actions, therefore, to reduce impacts below a level of significance, CDFW recommends a salvage plan be developed. The salvage plan should include protection of suitable habitat, focused surveys during the appropriate blooming period(s) to identify plant stand locations and a focused replanting process with monitoring and success criteria. The plan should also identify nearby source populations from the nearest estuarine populations which could be used for additional transplant, if a larger donor population is necessary.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or emailed to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or Robert.Stanley@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager at Craig.Weightman@wildlife.ca.gov.

cc: State Clearinghouse (SCH #2020059015)